IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 183 OF 2005

Shri Asphak Bengre,
Betim, Bardez, Goa. ... Applicant

versus

State(Through P.I.
attached to Porvorim
Police Station) ... Respondent

Mr. Menino Teles, Advocate for the Applicant.

Ms. Winnie Coutinho, Public Prosecutor for the State/Respondent, absent.

CORAM : N. A. BRITTO, J.

DATE : 14TH OCTOBER, 2005.

ORAL ORDER

The applicant who is accused no.1 in Crime No.134/05 of Mapusa Police Station and against whom a case is now pending before the Court of Sessions, Panaji, under Sections 143, 147, 148, 326, 307 r/w 149 I.P.C. has approached this Court for bail after having been unsuccessful before the Court of Sessions, Panaji. It appears that the said Sessions Case is fixed at the stage of arguments before charge. The last bail application

filed by the said accused before the Court of Sessions, Panaji, was rejected by the said Court by Order dated 24-8-2005.

The allegation against the applicant/A-1 and other 5 accused, out of which A-4/Sameer, A-5/Babu and A-6/Lambu are still absconding is that the applicant/A-1 on 30-11-2004 at about 11.30 hours the applicant/A-1 phoned the first informant Joaquim Pereira on his cell phone and called him at Betim turn near Rupesh Tea Stall and when Joaquim Pereira went there, the applicant/A-1 offered tea to the said Joaquim Pereira which he declined and thereafter the applicant/A-1 took the said Joaquim Pereira near a temple and then held something like a revolver to his head and at that time the other accused who were hiding in a Zen Car bearing No.GA-01-1538 came out of the said car whereupon the applicant/A-1 ordered in hindi "Tod Dalo Isko Aur paon nikalo" and then the said A-1/Mitan, A-2/Noor and A-3/Najeer assaulted him with talwar on both the hands and then A-1/Mitan, A-4/Sameer, A-5/Babu and A-6/Lambu assaulted him by iron pipe on both his legs and then he fell down on the ground and became unconscious. Apparently, the

said Joaquim Pereira was taken to G.M.C., Bambolim by the Police jeep where he was examined and was found having as many as 12 injuries including wounds, incised wounds and punctured wounds and from where the said Joaquim Pereira was discharged against medical advice and the complaint came to be filed only on 4-12-2004. It has been stated by the said Joaquim Pereira that in the said complaint he could not give the Police Complaint earlier as he was not in a condition to give the same.

Notice having been given to the respondent, the grant of bail has been opposed to and it has been stated that in the course of investigations no person came forward to make a statement against the accused out of fear and because of the notorious record of the accused. In the reply filed the details of the criminal record of Cognizable Cases, Non-Cognizable Cases, Chapter Cases and Externment case has been set out. From the record, it can be seen that there were 12 crimes registered against the applicant including this case namely, Crime No.134/05. The accused has filed a rejoinder to the said reply filed by the Investigation Officer and it has been submitted by Mr. Menino Teles, the learned Counsel, appearing on behalf of

the accused that in Crime No.42/96 under Section 394 r/w 34 I.P.C. the applicant has been acquitted. He further submits that Crime No.247/04 under Sections 356, 379 r/w 34 I.P.C. was finalised under Section 169 of the Code of Criminal Procedure, 1973(Code, for short) and in other cases the accused was not arrested but in 6 cases the trial is pending. The trial in which the cases are pending are Cr.No.90/98 under Section 397 r/w 34 I.P.C., Cr.No.47/2000 under Section 379 I.P.C., Cr.No.334/01 under Section 379 r/w 34 I.P.C., Cr.No.84/02 under Sections 143, 452, 504, 506(ii) r/w 149 I.P.C., Cr. No.39/03 under Section 392 r/w 34 I.P.C. Mr. Teles, has further submitted that in other cases the applicant has either not been arrested or charge-sheet filed. It is also stated in the reply filed by the Investigation Officer that after the commission of offences, the applicant was absconding for a period of 4 months and could be arrested after putting in much hard work and efforts only on 28-3-2005 and in case the applicant/A-1 is released on bail, the accused is likely to assault the complainant and create terror and fear amongst the public.

Mr. Teles, the learned Counsel appearing on behalf of

the applicant/A-1 has submitted that two of the accused were admitted to bail by the learned Sessions Judge and on that count the present applicant also would be entitled to bail. It appears that the learned Sessions Judge has distinguished the cases of the other accused who were admitted to bail and has stated that the case of the present applicant could not be compared to the cases of the said accused. As far as the said A-1/Mitan is concerned, the learned Sessions Judge has noted that he was soon arrested on 5-12-2004 and though his first bail application was rejected on 17-12-2004, he was released on bail on 7-1-2005 mainly on the ground that his wife was in advanced stage of pregnancy and his mother was a cancer patient and there were no other family members to take care of his wife and mother and that at that time there was no progress made in the investigations. As far as A-1/Najeer is concerned, the learned Sessions Judge had observed that unlike the case of the present applicant, the said A-3/Najeer had surrendered before the Police and there was nothing on record to prima facie indicate that the said A-3/Najeer was also involved in serious crimes. In other words, what the learned Sessions Judge wished to convey by the

said observation is that the past record of A-3/Najeer was not as bad as the present applicant/A-1.

Mr. Teles, has submitted that the said Joaquim Pereira, the complainant in this case is also a notorious character, having been involved in murder cases as well. Mr. Teles has submitted that the antecedents have been set out by the applicant/A-1 in para 12 of the rejoinder filed by the applicant dated 10-10-2005. However, I must hasten to add that on behalf of the accused no material is produced to show the antecedents of the said complainant and even assuming that the said complainant had the said antecedents as claimed by the accused, law does not permit that the said complainant ought to have been dealt with in a manner done by the accused with swords and pipes in the company of other accused as well. The fact that the said complainant had also bad antecedents can be no consideration for the grant of bail to the present applicant/A-1.

Next, Mr. Teles submits that Section 307 I.P.C. was added subsequently with a view to deny bail to the accused and

in fact, the learned J.M.F.C. at the time of rejecting the bail application filed on behalf of the applicant or for that matter, the learned Sessions Judge ought to have given a finding whether the application of the said Section 307 I.P.C. was justified or not. Mr. Teles, the learned Counsel was not able to point out to any decision of this Court or that of the Supreme Court which required that at the time of considering bail applications whether the facts stated constituted one offence or other. What the Courts are required to consider at the time of granting or refusing bail to an accused has been set out in various decisions of the Supreme Court elaborately though not exhaustively and these are the nature and gravity of the circumstances in which the offence is committed, the position and the status of the accused with reference to the victim and the witnesses; the likelihood of the accused fleeing from justice; or tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many variable factors cannot be exhaustively set out. The foremost considerations are the likelihood of the accused fleeing from justice and his tampering with the prosecution evidence. In other words, in the matters of grant or refusal of bail in Non-Bailable Cases the considerations are always one too many. In this case, the respondent has been able to point out the past record of the

applicant, a record which shows that there are as many as 11 crimes registered against him for Cognizable offences, as many as 3 Non Cognizable offences, as many as 9 Chapter Cases either under Sections 107, 109 or 110 which were filed against him and Externment Case which is also pending before the Collector. It has been submitted by Mr. Teles, the learned Counsel that the Chapter proceedings were dropped from time to time after the expiry of 6 months. In fact, the learned Public Prosecutor was asked to find out through the Investigation Officer whether the last Chapter Case bearing No.71/04 under Section 107 Cr.P.C. had come to an end or not. The Investigation Officer has not reported about the same. Nevertheless, the very fact that for almost every year from 2002 Chapter proceedings had to be filed against the applicant/A-1, does not speak well about his past criminal record and shows his tendency to take the law in his own hands. Even in the 6 cases where the accused was arrested and which are pending for trial, the applicant must have certainly been released on bail and each subsequent case shows that the bail order has been used by the applicant/accused as a licence to commit further crimes. A past record of a person is always a good indication of his future conduct.

As stated by the Apex Court in the case of **Gudikanti Narasimhulu and others** v. **Public Prosecutor**(AIR 1978 SC 429) the legal

principle and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational in this context to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society. Bail discretion, on the basis of evidence about the criminal record of a defendant is, therefore, not an exercise in irrelevance.

As already stated, in the case at hand, the accused was also found absconding after the commission of offence for a period of 4 months. As stated by this Court in the case of **Esteve Louis Vaz** v. **State**(Criminal Miscellaneous Application Nos.25, 26, 27 of 2005) relying on the observations of the Apex Court in the case of **Narayan Singh and another** (AIR 1980 SC 785) an outlaw cannot ask for the benefit of law and he who flees from justice cannot claim justice.

In other words, bail can be refused if the course of justice would be thwarted by the person who seeks the benignant jurisdiction of

the Court to be freed for the time being; (2) Bail can be refused if there is likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice and (3) Bail also can be refused if the antecedents of a man who is applying for bail shows a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail. All these factors are present in the case at hand. Bail is a concession. It is not a licence to commit further crimes.

In my view, the applicant/A-1 is not only involved in offences which are quite serious but his past conduct shows that if admitted to bail he is bound to use the bail order as a licence to inflict more offences on the members of the society as well as likely to interfere with the witnesses.

In the above view of the matter, this is not a fit case to admit the applicant/A-1 to bail. Application, therefore, is hereby rejected.

N. A. BRITTO, J.

RD.